

THE HONORABLE RICARDO S. MARTINEZ

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

LISA HOOPER, BRANDIE OSBORNE,
KAYLA WILLIS, REAVY
WASHINGTON, individually and on behalf
of a class of similarly situated individuals;
THE EPISCOPAL DIOCESE OF
OLYMPIA; TRINITY PARISH OF
SEATTLE; REAL CHANGE,

Plaintiffs,

v.

CITY OF SEATTLE, WASHINGTON;
WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION; ROGER
MILLAR, SECRETARY OF
TRANSPORTATION FOR WSDOT, in his
official capacity,

Defendants.

NO. 2:17-cv-00077 RSM

STATE DEFENDANTS' JOINDER IN
CITY OF SEATTLE'S MOTION FOR
CONVERSION OF PRELIMINARY
INJUNCTION RULING INTO FINAL
JUDGMENT ON THE MERITS AND
RESPONSE TO PLAINTIFFS' MOTION
TO DISMISS

Hearing date: 3/27/2020
Without Oral Argument

I. INTRODUCTION

The Washington State Department of Transportation (WSDOT) and Roger Millar, Secretary of Transportation for WSDOT (collectively State Defendants) join in the City of Seattle's (City) Motion for Conversion of Preliminary Injunction Ruling to Final Judgment on the Merits. *See* Dkt. 230. The State Defendants respectfully request the Court extend the same

1 relief requested by the City to State Defendants. As the City argues in its Motion, and for the
 2 reasons briefly set forth below, conversion of the Court's Order into a final judgment that
 3 dismisses Plaintiffs' claims with prejudice is the appropriate way to dispose of Plaintiffs'
 4 lawsuit.

5 **II. BACKGROUND FACTS**

6 Plaintiffs have been prosecuting this lawsuit against State Defendants and the City since
 7 January 2017. Dkt. 1. Plaintiffs have alleged that WSDOT's 2008 Guidelines to Address Illegal
 8 Encampments within State Right of Way ("Guidelines") are unconstitutional both on their face
 9 and as applied to the named Plaintiffs and the purported class of unhoused individuals in the
 10 greater Seattle area. Dkt. 73 at 22-47. They brought causes of action under both the U.S. and
 11 Washington State constitutions, alleging unlawful seizures of their personal belongings and
 12 deprivation of due process. *Id.* at 47-48.

13 Shortly after filing their complaint, Plaintiffs sought a temporary restraining order. Dkt.
 14 23. This motion was extensively briefed, with Plaintiffs, State Defendants, and the City filing
 15 numerous declarations. *See generally* Dkts. 24-33 (Plaintiffs' declarations); 39-48 (Defendants'
 16 declarations). In denying their motion, this Court held that Plaintiffs had not established a
 17 likelihood of success on the merits because they had not established that State Defendants had
 18 acted unreasonably in the enactment or enforcement of their rules for cleaning up unauthorized
 19 homeless encampments within their respective rights of way. Dkt. 65 at 14-16. This Court
 20 further held that plaintiffs had not established irreparable harm because they did not set forth
 21 sufficient facts to show they resided in an area subject to a future clean-up and because WSDOT,
 22 by policy, provides at least 72 hours' notice of upcoming clean-ups. *Id.* at 16.

23 After the temporary restraining order was denied, the parties engaged in extensive
 24 discovery. The State Defendants responded to plaintiff's first discovery requests in April 2017,
 25 with supplemental productions provided the following month. Dkt. 218 ¶ 8. In total, the State
 26 Defendants produced 18,738 records totaling 34,609 pages. *Id.* ¶ 8. The parties conducted

1 sixteen depositions of WSDOT and City staff, as well as some of the Plaintiffs or their
2 representatives. *Id.* ¶¶ 11-12.

3 As the City notes in its Motion, Plaintiffs’ motions for a preliminary injunction and class
4 certification were both denied. *See* Dkt. 209. As part of that denial, this Court held that plaintiffs
5 failed to address their state constitutional claims in their motion for a preliminary injunction, and
6 thus failed to demonstrate they were likely to succeed on the merits of those claims. *Id.* at 31.
7 This case was stayed pending Plaintiffs’ appeal of the class certification denial to the Ninth
8 Circuit Court of Appeals, which affirmed this Court’s ruling. *See* Dkts. 224-25.

9 After the City filed its Motion, Plaintiffs moved to voluntarily dismiss their case pursuant
10 to Fed. R. Civ. P. 41(a)(2). Dkt. 234.

11 III. STANDARD OF REVIEW

12 The State Defendants concur with the City’s analysis of the applicable standard of
13 review.

14 IV. ARGUMENT

15 After extensive discovery, written and oral argument, and the Court’s issuance of detailed
16 rulings on Plaintiffs’ requests for injunctive relief and class certification (the latter being
17 affirmed on appeal), the time is ripe to grant summary judgment to the State Defendants as well
18 as the City on the merits of the case.

19 In order to prevail on a Fourth Amendment seizure claim, a plaintiff must show that not
20 only did a government agency seize an individual’s property, but that the seizure was
21 unreasonable. *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1013 (C.D. Cal. 2011). To
22 the extent Plaintiffs established any “seizure” made by State Defendants, Plaintiffs did not
23 establish that the seizures were unreasonable under *Lavan*. As this Court noted in its Order
24 denying a preliminary injunction, and by Plaintiff Brandi Osborne’s own admission, the State
25 Defendants “engaged in the opposite of summary destruction [of personal property]” in the
26 single alleged instance of a “WSDOT-only clean-up” (where the City was not a participant).

1 Dkt. 209 at 24. This fact, in addition to the State Defendants’ clean-up notice procedures and
 2 opportunity for homeless individuals to avoid property deprivation, demonstrate that Plaintiffs
 3 are unlikely to prevail on the issue of whether the State Defendants unreasonably deprive
 4 individuals of their property left within the highway right-of-way.

5 Plaintiffs also fail to articulate a viable Fourteenth Amendment claim against State
 6 Defendants. Since WSDOT provides homeless individuals ample written and verbal notice of
 7 upcoming clean-ups as well as storage of non-hazardous items for at least 70 days, Plaintiffs
 8 “fail to explain why WSDOT’s provision of these due process safeguards fails the *Mathews v.*
 9 *Eldridge* test.” Dkt. 209 at 30. Moreover, plaintiffs did not demonstrate that WSDOT employees
 10 fail to follow these protections based on an established state procedure. *Id.*

11 As to Plaintiffs state constitutional claims, this Court must grant summary judgment for
 12 State Defendants for two reasons. First, as WSDOT and Secretary Millar have already argued
 13 in supplemental briefing, “[t]he Eleventh Amendment precludes a federal court’s consideration
 14 of a state claim against a nonconsenting state, period.” Dkt. 207 at 1 (citing *Pennhurst State*
 15 *School Hospital v. Halderman*, 465 U.S. 89, 121 (1984)). Second, even if this Court were to
 16 reach the merits of Plaintiffs’ state constitutional claims against State Defendants, this Court has
 17 already held that Plaintiffs have failed to address those claims in their motion for preliminary
 18 injunction, and thus have failed to demonstrate a likelihood of success on the merits. Dkt. 209
 19 at 31.

20 Finally, State Defendants would experience similar prejudice as the City should this
 21 Court permit Plaintiffs to voluntarily dismiss their lawsuit at this late stage of the case. While
 22 State Defendants are not involved in the subsequent state court litigation that Plaintiffs are
 23 pursuing, the State Defendants have devoted considerable resources to this case, including
 24 responding to Plaintiffs’ extensive discovery requests and briefing the Court on the merits of the
 25 case. *See* Dkt. 218.
 26

V. CONCLUSION

The parties agree that the time has come to dismiss Plaintiffs' lawsuit, but the City's mechanism for doing so is the appropriate one. In joining the City's Motion, and for the reasons stated above, State Defendants respectfully request that the Court convert its prior order into a final judgment on the merits and dismiss Plaintiffs' claims with prejudice.

DATED this 16th day of March 2020.

ROBERT W. FERGUSON
Attorney General

/s/ Matthew D. Huot
MATTHEW D. HUOT, WSBA #40606
Assistant Attorney General
Attorney for Washington State Department of
Transportation and Roger Millar

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2020, I electronically filed the foregoing document with the United States District Court ECF system, which will send notification of such filing to all counsel of record.

DATED this 16th day of March, 2020, at Tumwater, Washington.

/s/Jennifer D. Williams

JENNIFER D. WILLIAMS
Paralegal